



The Energy and Technology Committee

Public Hearing, February 26, 2019

Office of Consumer Counsel

Elin Swanson Katz, Consumer Counsel

Testimony of Elin Swanson Katz

Proposed Bill No. 7155

An Act Concerning Consumer Protections for Customers of Electric Suppliers.

The Office of Consumer Counsel (OCC) has reviewed Proposed Bill No. 7155, which seeks to (i) provide additional protections to customers when dealing with third-party electric suppliers, (ii) authorize the Public Utilities Regulatory Authority (PURA) to order restitution as a potential remedy, and (iii) prohibit the assignment or transfer of customers from one electric supplier to another without prior approval of PURA. OCC supports this bill.

While OCC supports the important consumer protections raised in this Bill, experience shows that they are not enough to protect consumers from the unscrupulous marketing practices of electric suppliers. OCC respectfully requests that the Committee add the language from OCC's proposed legislative ban of new supplier contracts in the residential market, discussed further below, and attached as Attachment A.

The consumer protections in this Bill are derived from actual examples learned during years' worth of PURA enforcement proceedings investigating the marketing practices of certain electric suppliers. OCC has reviewed countless actual telemarketing and door-to-door audio recordings and written transcripts of solicitations during such proceedings, and repeatedly found that: (i) due to deceptive marketing, consumers did not understand the nature of the marketing solicitation or with whom they

were contracting, (ii) consumers were misled by suppliers' reference to a "state program," (iii) customers were often tricked into believing they were signing up for a utility-sponsored program, (iv) consumers shared their utility account number before they provided consent to a contract (which could lead to "slamming," a recognized problem in the market), and (v) consumers were misled into believing that the Utility Standard Service price is variable (and so could rise unexpectedly) and even deceived into believing it would be higher than the actual price. As such, to protect consumers from the repeated unfair marketing practices borne out in enforcement proceedings, OCC supports the additional consumer protections in Section 2, subsection (p)(4).

OCC underscores that the recording and retention of both telesales and "face-to-face" solicitations in Section 2, subsections (p)(1) and (2) are critical to effective and fair enforcement of the existing statutory protections and supplemental protections in this Bill. Without the recording and retention of marketing solicitations, PURA and other consumer protection agencies have no way of accurately knowing whether electric suppliers violated the law in their marketing solicitations. Importantly, the recording and retention of both telesales and "face-to-face" marketing solicitations is an essential enforcement tool that would foster a culture of transparency and accountability.

OCC offers the following specific support and suggestions to the language of the Bill. Section 1 of the Bill would define "Telesales call" in order to establish greater regulation of such calls by electric suppliers in the subsequent section. OCC believes that the definition of "Telesales call" is appropriately drafted, but would respectfully suggest adding "voice over Internet protocol lines" after "land telephone lines and cellular telephone lines," just to be certain of reaching, for example, calls made over cable Internet services.

Section 2 would create new Section 16-245o(p)(1), requiring that telesales calls be retained by electric suppliers for two years. OCC supports this provision but would suggest a period of three years. This suggestion is based on OCC's experience in numerous retail supplier investigation proceedings. OCC would also suggest requiring that suppliers have systems in place to retain all sales recordings beyond three years, if so ordered by PURA.

Section 2 would also add new Section 16-245o(p)(2), requiring the recording of all “face-to face marketing interactions” by electric suppliers and retention for two years. OCC suggests that as with “telesales calls,” it might be wise to put in a definitional provision of “face-to-face marketing interactions.” OCC also would suggest retention for at least three years, and requiring that suppliers have systems in place to retain all “face-to-face marketing interactions” beyond three years, if so ordered by PURA. In addition, OCC suggests that the Bill include explicit language that all third-party verifications be recorded and retained for at least three years.

OCC supports new Section 16-245o(p)(3), regarding criminal background checks for door-to-door marketers, but suggests that the same “face-to-face market[er]” language be used, as in the rest of the proposed Bill. Folks who open their doors to marketing solicitations are captive in many respects to aggressive and predatory marketing tactics. Up to date criminal background checks are an essential safeguard for all “face-to-face” marketers given the potential for “crimes of opportunity” related to “face-to-face” marketing. OCC finds a Maryland Public Service Commission regulation on this issue to be instructive regarding the level of detail necessary to ensure that suppliers properly effectuate criminal background checks. See Md. Code Regs. 20.53.08.02. As such, OCC further suggests that “criminal background check” be defined to include at least (i) a criminal history record from the Federal Bureau of Investigation, (ii) a Connecticut criminal history record, and (iii) a criminal history record from all other states in which the potential marketer resided within for at least the past 12 months.

Section 3 would add restitution as a possible PURA remedy for legal violations of all kinds. OCC has repeatedly seen instances where restitution would be a highly appropriate remedy, including in the areas of electric supply and illegal electric submetering, and frankly customers often expect that restitution of their losses is required by justice. However, OCC and customers have been hamstrung by PURA’s legal inability to date to order restitution. OCC hopes that this hole in the statutory scheme will be fixed at long last.

Section 4 would clarify the law as requiring that all transfers of customers from one electric supplier to another must be pre-approved by PURA. In practice, OCC has seen some electric suppliers seek PURA approval for transfers, but the clarification is welcome.

OCC supports new Sections 16-245o(p)(5), -(6), and -(7) as written and notes that all of these are potent and necessary consumer protections, based on experience in PURA proceedings.

While OCC supports these additional consumer protections, OCC also requests that the Committee add the language OCC has previously proposed to ban new residential contracts in the third-party market. See Attachment A. This legislation is very similar to legislative proposals being considered in Massachusetts and New York. See Attachment A. As we previously testified, based on public data, our analysis shows that from 2015-2018, Connecticut consumers with suppliers have paid an estimated \$200 million more than if those consumers had remained on Utility Standard Service. See OCC Fact Sheet, 2/26/19, Attachment B. This is despite the millions paid in settlements and penalties by the suppliers, and the millions more in fines currently being litigated before PURA.

Of course, the unsuccessful efforts to police the residential supplier market come at a high price for all consumers. PURA, OCC, the Attorney General, and the Department of Consumer Protection have all spent thousands and thousands of hours, and untold millions in taxpayer and ratepayer dollars on enforcement actions, consumer education, supplier investigations, and supplier working groups trying to make this market fair and transparent for residential consumers. Unfortunately, these collective efforts have failed.

Other states and stakeholders have also studied the harmful impact of the market on consumers:

- “Are Consumers Benefitting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts,” March 2018 Report by the Massachusetts Attorney General’s Office;

- “Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts,” April 2018 Report issued by the National Consumer Law Center; and
- “Maryland’s Residential Electric and Gas Supply Markets: Where Do We Go from Here?,” November 2019 Report Issued by the Maryland Office of People’s Counsel.

In addition, tomorrow OCC will file its own study of the impact of the residential supplier market on hardship customers in PURA Docket No. 18-06-02, *Review of Feasibility, Costs, and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. Stat. § 16-245o(m)*. Our study will detail the disproportionate harm to our most vulnerable citizens. Specifically, our report finds that during a 24-month study period (October 2016-September 2018), Connecticut’s hardship electric customers paid approximately \$7.2 million more to purchase electricity from third-party suppliers than if they purchased Utility Standard Service. This is an average annual net loss of \$143 per hardship household. Moreover, in some of Connecticut’s poorest communities—such as communities in Waterbury, Bridgeport, and Hartford—approximately 50 percent of hardship customers purchase their electricity from third-party suppliers and pay up to an average of 2 cents more per kilowatt hour over Utility Standard Service to do so. Likewise, hardship customers living in communities with high percentages of minority populations disproportionately participate in the third-party electric supply market, and pay high premiums to do so. Of course, there is no risk to suppliers in targeting those consumers least able to pay higher electric bills, as the suppliers’ uncollectibles are passed on at approximately 99 cents on the dollar to Eversource and United Illuminating, which utilities then collect the uncollectibles of suppliers from the general class of electric ratepayers.

Finally, OCC would like to respond to claims by some in the supplier community that consumers can save money at any time, and referencing the rates listed on the “Rate Board” found at Energizect.com. While the Rate Board is a terrific resource maintained by PURA (again at some cost to consumers), a very small percentage of consumers actually sign up through the Rate Board. Evidence provided in PURA’s

enforcement actions demonstrate that less than 10% of customers, and perhaps as low as under 1% of customers for some suppliers, sign up through the Rate Board.

Instead, vast majority of customers are enrolled through door-to-door and telephone sales. Customers enrolled this way are subject to a seemingly endless variety of potential rates, most of which would not appear as a “saving” had the customer enrolled through the Rate Board. Specifically, in the month of December 2018, Constellation Energy had 84 different rates, 31216 residential customers, and only 1798 saving money (5.8%) as compared to Standard Service. Direct Energy had 90 different rates, 30637 residential customers, and only 358 saving money (1.2%) as compared to Standard Service. Clearview Energy had 49 different rates, 21278 residential customers, and only 4096 saving money (19.2%) as compared to Standard Service. Liberty Power had 1047 different rates, 12257 residential customers, and only 29 saving money (.2%) as compared to Standard Service.

OCC respectfully urges the Committee to fully protect consumers by banning electric suppliers from entering into new contracts with residential customers. During the transition, and considering the number of legacy contracts that would continue in effect should the contract ban be implemented, the additional consumer protections in this Bill are essential to protect consumers.

In sum, OCC supports Raised Bill No. 7155, with the addition of the residential contract ban language. This measure that would fully protect consumers in the residential supplier market warrants a full and transparent discussion. OCC supports the consumer protections in this Bill to protect residential consumers during the transition to no new contracts and to protect those residential customers with legacy contracts with third-party electric suppliers.

OCC Proposal: To ban new third-party electric supplier contracts with residential customers, while providing customers with renewable, efficiency, or time-based options through the electric distribution company.

Section 1. (NEW) (*Effective from passage*) On or after October 1, 2019, no electric supplier shall execute a new contract to serve a residential customer with electric generation services; provided, however, that (i) any electric supplier that received certification from the Public Utilities Regulatory Authority as a Connecticut electric efficiency partner under section 16-243v on or prior to December 31, 2018, may continue to execute contracts with residential customers to provide electric generation services involving enhanced demand-side management technologies during the period where such supplier qualifies as a Connecticut electric efficiency partner and following that period; and (ii) an electric supplier may execute a contract with a residential customer arising from a community choice aggregation program that may be approved by the Public Utilities Regulatory Authority. Any violation of this section shall be subject to enforcement under section 16-245o(k).

Section 2. Subsection (b) of Section 16-244c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) (1) Notwithstanding the provisions of this section regarding the procurement of electric generation services under standard service, section 16-244h or 16-245o, the Department of Energy and Environmental Protection [~~may, from time to time,~~] shall, on or before September 1, 2019, and from time to time thereafter, direct [an] each electric distribution company to offer[, through an electric supplier or electric suppliers,] one or more alternative standard service options. Such alternative options shall include, but not be limited to, an option that consists of the provision of electric generation services that [~~exceed the renewable portfolio standards established in section 16-245a~~] contains 100% Class I renewable energy, and shall [may] include an option that utilizes strategies or technologies that reduce the overall consumption of electricity of the customer and an option that includes rates that fluctuate during three or more daily time periods with the goal of reducing the customer's usage during times of high electricity demand.

(2) (A) The authority shall develop such alternative option or options in a contested case conducted in accordance with the provisions of chapter 54. The authority shall determine the terms and conditions of such alternative option or options, including, but not limited to, (i) the minimum contract terms, including pricing, length and

termination of the contract, and (ii) the minimum percentage of electricity derived from Class I, ~~[or]~~ Class II or Class III renewable energy sources, if applicable. ~~[The]~~ Each electric distribution company shall consult and cooperate with the procurement manager of the Public Utilities Regulatory Authority to develop and implement a procurement plan for purchase of the products needed to serve each alternative standard service option approved by the Public Utilities Regulatory Authority. Each electric distribution company shall recover the actual net costs of procuring and providing electric generation services and other products necessary to serve each alternative standard service option. ~~[, under the supervision of the authority, subsequently conduct a bidding process in order to solicit electric suppliers to provide such alternative option or options.]~~

~~(B) The authority may reject some or all of the bids received pursuant to the bidding process.~~

~~(3) The authority may require an electric supplier to provide forms of assurance to satisfy the authority that the contracts resulting from the bidding process will be fulfilled.~~

~~(4) An electric supplier who fails to fulfill its contractual obligations resulting from this subdivision shall be subject to civil penalties, in accordance with the provisions of section 16-41, or the suspension or revocation of such supplier's license or a prohibition on the acceptance of new customers, following a hearing that is conducted as a contested case, in accordance with the provisions of chapter 54.]~~

STATE OF NEW YORK

3758

2019-2020 Regular Sessions

IN SENATE

February 13, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to services provided to residential customers by energy service companies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The public service law is amended by adding a new section
- 2 54 to read as follows:
- 3 § 54. Services to residential customers by energy service companies.
- 4 Beginning January first, two thousand twenty, no energy service company
- 5 shall execute a new contract for generation services with any individual
- 6 residential retail customer. This section shall not apply to, or other-
- 7 wise affect, any government body that aggregates the load of residential
- 8 retail customers as part of a community choice aggregation program
- 9 approved by the commission. Any violation of this section shall be
- 10 deemed a deceptive act or practice within the meaning of article twen-
- 11 ty-two-a of the general business law, and the attorney general is hereby
- 12 authorized to bring an action under such article to enforce this section
- 13 and to obtain civil penalties, injunctive relief, and any other relief
- 14 awarded pursuant to such article twenty-two-a.
- 15 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD09893-01-9

HOUSE DOCKET, NO. 1204 FILED ON: 1/16/2019

HOUSE No.**The Commonwealth of Massachusetts**

PRESENTED BY:

*Frank A. Moran**To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to protecting residential electric customers.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Frank A. Moran**17th Essex**Maura Healey**1 Ashburton Place, 20th Floor Boston, MA
02108*

HOUSE DOCKET, NO. 1204 FILED ON: 1/16/2019

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to protecting residential electric customers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 164 of the General Laws is hereby amended by inserting after
2 section 1K the following section:

3 Section 1L. Beginning on January 1, 2020, no supplier, energy marketer, or energy
4 broker shall execute a new contract for generation services with any individual residential retail
5 customer. This provision shall not apply to, or otherwise affect, any government body that
6 aggregates the load of residential retail customers as part of a municipal aggregation plan
7 pursuant to chapter 164, § 134. Any violation of this provision shall be deemed an unfair and
8 deceptive act pursuant to the provisions of chapter 93A, and the attorney general is hereby
9 authorized to bring an action under section 4 of chapter 93A to enforce this provision and to
10 obtain restitution, civil penalties, injunctive relief, and any other relief awarded pursuant to said
11 chapter 93A.

SENATE DOCKET, NO. 880 FILED ON: 1/16/2019

SENATE No.**The Commonwealth of Massachusetts**

PRESENTED BY:

James T. Welch*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to protecting residential electric customers.

PETITION OF:

NAME:

*James T. Welch**Maura Healey*

DISTRICT/ADDRESS:

*Hampden**Attorney General*

SENATE DOCKET, NO. 880 FILED ON: 1/16/2019

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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11 chapter 93A.



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February 26, 2019

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OCC FACT SHEET:

In Support of Legislation to End the Third-Party Residential Electric Supply Market

- I. **Economic Harm:** CT's Economy is Thwarted by Third-Party Residential Electric Supply
 - A. OCC Analysis: From Approximately 2015-2018, CT Consumers with Third-Party Electric Suppliers Have Paid An Estimated **\$200M** More Than Consumers on Utility Standard Service
 - i. 2015: \$58,263,855 Overpayment
 - ii. 2016: \$59,011,285 Overpayment
 - iii. 2017: \$46,316,174 Overpayment
 - iv. 12/2017- 11/2018: \$38,657,299 Overpayment
 - v. Note: the overpayment figures from 2015-2018 have subsided somewhat due primarily to the gradually decreasing number of consumers using third-party electric suppliers.
 - B. Other States Have Issued Reports Detailing Economic Harm from Third-Party Residential Supply
 - i. "Are Consumers Benefitting from Competition? An Analysis of the Individual Residential Electric Supply Market in Massachusetts," March 2018 [Report](#) by the Massachusetts Attorney General's Office; Eversource Exec [Op-Ed](#) in support thereof
 - ii. "Competing to Overcharge Consumers: The Competitive Electric Supplier Market in Massachusetts," April 2018 [Report](#) issued by the National Consumer Law Center
 - iii. "Maryland's Residential Electric and Gas Supply Markets: Where Do We Go from Here?," November 2019 [Report](#) Issued by the Maryland Office of People's Counsel
 - C. Third-Party Electric Suppliers Do Not Bring Meaningful Employment to CT
 - i. Most marketing is done by third-party agents who are generally paid by commission.
 - ii. Telesales marketing vendors are mostly from outside of CT.
 - iii. Door-to-door marketing is not as significant as telesales due to CT winters, and many door-to-door marketing agents are bused in from out of state to solicit in CT neighborhoods for a day. OCC [Brief](#) at 62-63, PURA Docket No. 06-12-07RE07.
 - iv. Even if in-state, most marketing jobs are transitory. OCC's collective experience shows that most marketing agents do not stay in their positions for meaningful periods of time.
- II. **Legislative:** CT Has the Most Robust Consumer Protections Nationally Yet Consumer Harm Persists
 - A. CT was the first state to implement a Variable Rate Ban through [Public Act No. 15-90](#)
 - B. Considerable Consumer Protection Legislation was enacted through [Public Act No. 14-75](#)
 - C. The MA Attorney General found: "In Connecticut, the legislature and [PURA] strengthened

consumer protections through the adoption of a number of comprehensive measures, including a ban on variable rates. However, these measures have merely mitigated the loss and not transformed the market into one that provides net benefits.” [Report](#) at 40.

III. **CT Regulatory Proceedings:** Despite Strong PURA Enforcement, Consumer Harm is Still Rampant

- A. Energy Plus: \$4.5M Settlement, PURA [Decision](#), June 11, 2014
- B. North American Power: \$2.6M Settlement, PURA [Decision](#), Oct. 28, 2015
- C. Public Power: \$13k Civil Penalty, PURA [Decision](#), Jan. 20, 2016
- D. Palmco Power: \$5M Settlement & 5-year Stay-out, PURA [Decision](#), Aug. 16, 2017
- E. Spark Energy, \$900k Civil Penalty (pending), PURA [Notice of Violation](#), Mar. 21, 2018
- F. Choice Energy: \$250k Civil Penalty, PURA [Decision](#), June 13, 2018
- G. Liberty Power: \$57,475 Civil Penalty, PURA [Decision](#), July 2, 2018
- H. Spark Energy, \$750k Civil Penalty (pending), PURA [Notice of Violation](#), Sept. 5, 2018
- I. Direct Energy: \$1.5M Civil Penalty (pending), PURA [Notice of Violation](#), Sept. 11, 2018
- J. Liberty Power: \$1.5M Civil Penalty (pending), PURA [Notice of Violation](#), Sept. 12, 2018

IV. **The Third-Party Residential Electric Supply Market Causes a State & Regulatory Resource Drain**

- A. All of the above and the sampling of below PURA enforcement proceedings involved thousands and thousands of work hours by staff of resource-strapped state agencies (PURA, OCC, AGO)
- B. PURA Docket No. 13-07-18: Establishment of Rules for Third-Party Electric Suppliers and Electric Utilities Concerning Operations & Marketing in the Electric Retail Market
- C. PURA Docket Nos. 14-07-19, 14-07-19RE01, 14-07-19RE02, 14-07-19RE03, 14-07-19RE04, and 14-07-19RE05 (ongoing): all investigating issues related to supplier information in the residential electric bill redesign
- D. PURA Docket Nos. 14-07-20 & 14-07-20RE01 (ongoing): establishing third-party electric supplier marketing standards
- E. PURA Docket No. 18-06-02 (ongoing): investigating whether “hardship” customers should be placed on electric utility standard service

V. **Other State Actors Have Called for the End of Individual Third-Party Residential Electric Supply**

- A. New York State Senate Bill [S3758](#) seeks to ban new individual residential third-party contracts
- B. The MA Attorney General has co-sponsored [Legislation](#) (House Docket No. 1204 and Senate Docket No. 880) to ban new individual third-party residential electric contracts
- C. The IL Attorney General’s [Press Release](#) Calling for the End of Third-Party Residential Electric Supply, Oct. 15, 2018

VI. **CT’s Most Vulnerable Populations are Harmed and Targeted by Third-Party Electric Supply**

- A. Vulnerable Populations include, but are not limited to, Senior Citizens, Low-Income Residents, English as a Second Language Residents, and Disabled Residents
 - i. High frequency of consumer complaints come from vulnerable populations
 - ii. Vulnerable populations are more frequently marketed to by electric suppliers
- B. PURA Docket No. [18-06-02](#): investigating whether “hardship” customers should be placed on electric utility standard service